

SB1770



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1770

Introduced 2/9/2011, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

30 ILCS 500/50-35

Amends the Illinois Procurement Code. Provides that, for contracts with the State, a privately held entity that is exempt from Federal 10k reporting but has more than 200 (now, 400) shareholders may, in place of the prescribed disclosures, submit the information that Federal 10k reporting companies are required to report under federal regulations and list the names of any person or entity holding any ownership share greater than 5%. Effective immediately.

LRB097 06570 PJG 46655 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Procurement Code is amended by
5 changing Section 50-35 as follows:

6 (30 ILCS 500/50-35)

7 Sec. 50-35. Financial disclosure and potential conflicts
8 of interest.

9 (a) All offers from responsive bidders or offerors with an
10 annual value of more than \$25,000, and all subcontracts
11 identified as provided by Section 20-120 of this Code, shall be
12 accompanied by disclosure of the financial interests of the
13 contractor, bidder, or proposer and each subcontractor to be
14 used. The financial disclosure of each successful bidder or
15 offeror and its subcontractors shall be incorporated as a
16 material term of the contract and shall become part of the
17 publicly available contract or procurement file maintained by
18 the appropriate chief procurement officer. Each disclosure
19 under this Section and Section 50-34 shall be signed and made
20 under penalty of perjury by an authorized officer or employee
21 on behalf of the bidder or offeror, and must be filed with the
22 Procurement Policy Board.

23 (b) Disclosure shall include any ownership or distributive

1 income share that is in excess of 5%, or an amount greater than
2 60% of the annual salary of the Governor, of the disclosing
3 entity or its parent entity, whichever is less, unless the
4 contractor, bidder, or subcontractor (i) is a publicly traded
5 entity subject to Federal 10K reporting, in which case it may
6 submit its 10K disclosure in place of the prescribed
7 disclosure, or (ii) is a privately held entity that is exempt
8 from Federal 10k reporting but has more than 200 ~~400~~
9 shareholders, in which case it may submit the information that
10 Federal 10k reporting companies are required to report under 17
11 CFR 229.401 and list the names of any person or entity holding
12 any ownership share that is in excess of 5% in place of the
13 prescribed disclosure. The form of disclosure shall be
14 prescribed by the applicable chief procurement officer and must
15 include at least the names, addresses, and dollar or
16 proportionate share of ownership of each person identified in
17 this Section, their instrument of ownership or beneficial
18 relationship, and notice of any potential conflict of interest
19 resulting from the current ownership or beneficial
20 relationship of each person identified in this Section having
21 in addition any of the following relationships:

22 (1) State employment, currently or in the previous 3
23 years, including contractual employment of services.

24 (2) State employment of spouse, father, mother, son, or
25 daughter, including contractual employment for services in
26 the previous 2 years.

1 (3) Elective status; the holding of elective office of
2 the State of Illinois, the government of the United States,
3 any unit of local government authorized by the Constitution
4 of the State of Illinois or the statutes of the State of
5 Illinois currently or in the previous 3 years.

6 (4) Relationship to anyone holding elective office
7 currently or in the previous 2 years; spouse, father,
8 mother, son, or daughter.

9 (5) Appointive office; the holding of any appointive
10 government office of the State of Illinois, the United
11 States of America, or any unit of local government
12 authorized by the Constitution of the State of Illinois or
13 the statutes of the State of Illinois, which office
14 entitles the holder to compensation in excess of expenses
15 incurred in the discharge of that office currently or in
16 the previous 3 years.

17 (6) Relationship to anyone holding appointive office
18 currently or in the previous 2 years; spouse, father,
19 mother, son, or daughter.

20 (7) Employment, currently or in the previous 3 years,
21 as or by any registered lobbyist of the State government.

22 (8) Relationship to anyone who is or was a registered
23 lobbyist in the previous 2 years; spouse, father, mother,
24 son, or daughter.

25 (9) Compensated employment, currently or in the
26 previous 3 years, by any registered election or re-election

1 committee registered with the Secretary of State or any
2 county clerk in the State of Illinois, or any political
3 action committee registered with either the Secretary of
4 State or the Federal Board of Elections.

5 (10) Relationship to anyone; spouse, father, mother,
6 son, or daughter; who is or was a compensated employee in
7 the last 2 years of any registered election or re-election
8 committee registered with the Secretary of State or any
9 county clerk in the State of Illinois, or any political
10 action committee registered with either the Secretary of
11 State or the Federal Board of Elections.

12 (b-1) The disclosure required under this Section must also
13 include the name and address of each lobbyist required to
14 register under the Lobbyist Registration Act and other agent of
15 the bidder or offeror who is not identified under subsections
16 (a) and (b) and who has communicated, is communicating, or may
17 communicate with any State officer or employee concerning the
18 bid or offer. The disclosure under this subsection is a
19 continuing obligation and must be promptly supplemented for
20 accuracy throughout the process and throughout the term of the
21 contract if the bid or offer is successful.

22 (b-2) The disclosure required under this Section must also
23 include, for each of the persons identified in subsection (b)
24 or (b-1), each of the following that occurred within the
25 previous 10 years: debarment from contracting with any
26 governmental entity; professional licensure discipline;

1 bankruptcies; adverse civil judgments and administrative
2 findings; and criminal felony convictions. The disclosure
3 under this subsection is a continuing obligation and must be
4 promptly supplemented for accuracy throughout the process and
5 throughout the term of the contract if the bid or offer is
6 successful.

7 (c) The disclosure in subsection (b) is not intended to
8 prohibit or prevent any contract. The disclosure is meant to
9 fully and publicly disclose any potential conflict to the chief
10 procurement officers, State purchasing officers, their
11 designees, and executive officers so they may adequately
12 discharge their duty to protect the State.

13 (d) When a potential for a conflict of interest is
14 identified, discovered, or reasonably suspected, the chief
15 procurement officer or State procurement officer shall send the
16 contract to the Procurement Policy Board. The Board shall
17 recommend, in writing, whether to allow or void the contract,
18 bid, offer, or subcontract weighing the best interest of the
19 State of Illinois. All recommendations shall be submitted to
20 the chief procurement officer. The chief procurement officer
21 must hold a public hearing if the Procurement Policy Board
22 makes a recommendation to (i) void a contract or (ii) void a
23 bid or offer and the chief procurement officer selected or
24 intends to award the contract to the bidder or offeror. A chief
25 procurement officer is prohibited from awarding a contract
26 before a hearing if the Board recommendation does not support a

1 bid or offer. The recommendation and proceedings of any
2 hearing, if applicable, shall become part of the contract, bid,
3 or proposal file and shall be available to the public.

4 (e) These thresholds and disclosure do not relieve the
5 chief procurement officer, the State purchasing officer, or
6 their designees from reasonable care and diligence for any
7 contract, bid, offer, or proposal. The chief procurement
8 officer, the State purchasing officer, or their designees shall
9 be responsible for using any reasonably known and publicly
10 available information to discover any undisclosed potential
11 conflict of interest and act to protect the best interest of
12 the State of Illinois.

13 (f) Inadvertent or accidental failure to fully disclose
14 shall render the contract, bid, proposal, subcontract, or
15 relationship voidable by the chief procurement officer if he or
16 she deems it in the best interest of the State of Illinois and,
17 at his or her discretion, may be cause for barring from future
18 contracts, bids, proposals, subcontracts, or relationships
19 with the State for a period of up to 2 years.

20 (g) Intentional, willful, or material failure to disclose
21 shall render the contract, bid, proposal, subcontract, or
22 relationship voidable by the chief procurement officer if he or
23 she deems it in the best interest of the State of Illinois and
24 shall result in debarment from future contracts, bids,
25 proposals, subcontracts, or relationships for a period of not
26 less than 2 years and not more than 10 years. Reinstatement

1 after 2 years and before 10 years must be reviewed and
2 commented on in writing by the Governor of the State of
3 Illinois, or by an executive ethics board or commission he or
4 she might designate. The comment shall be returned to the
5 responsible chief procurement officer who must rule in writing
6 whether and when to reinstate.

7 (h) In addition, all disclosures shall note any other
8 current or pending contracts, proposals, subcontracts, leases,
9 or other ongoing procurement relationships the bidding,
10 proposing, offering, or subcontracting entity has with any
11 other unit of State government and shall clearly identify the
12 unit and the contract, proposal, lease, or other relationship.

13 (i) The contractor or bidder has a continuing obligation to
14 supplement the disclosure required by this Section throughout
15 the bidding process or during the term of any contract.

16 (Source: P.A. 95-331, eff. 8-21-07; 96-795, eff. 7-1-10 (see
17 Section 5 of P.A. 96-793 for the effective date of changes made
18 by P.A. 96-795); 96-920, eff. 7-1-10.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.